APPENDIX

(EXHIBIT "A")

IN THE

Supreme Court of the United States

OCTOBER TERM, 1925

OLD COLONY TRUST COMPANY, as Trustee, *Appellant*, —vs.— THE CITY OF SEATTLE, COUNTY OF KING, W. W. SHIELDS, as Treasurer, and MATT STARWICH, as Sheriff of King County, *Appellees.*	No. 194

Affidavit of George A. Meagher in Support of Motion to Dismiss

STATE OF WASHINGTON, } ss.
COUNTY OF KING, }

GEORGE A. MEAGHER, being first duly sworn, upon oath deposes and says:

That this affidavit is made in support of the motion to dismiss herein of appellees;

That affiant is an Attorney-at-Law, duly admitted to practice before the bar of this court; that at all times herein mentioned he has been and now is Assistant Corporation Counsel of the City of Seattle, Washington, and as such has had charge for the City of Seattle of the litigation of the above entitled cause over the 1919 personal property tax herein involved;

That on the 5th day of March, 1926, the above entitled court heard argument on the appeal herein and upon the motion of appellees to dismiss such appeal·

That subsequent thereto, and on the 22nd day of March, 1926, there came on for trial in the District Court of the United States for the Western District of Washington, Northern Division, the case of *Puget Sound Power & Light Company v. The City of Seattle*, Cause No. 404 In Equity, being the same case decided by the United States Circuit Court of Appeals for the Ninth Circuit, reported in 5 Fed. Rep. 2d Series, 393, the said case being an action by the plaintiff to recover from the defendant three-fourths of the amount of the principal and interest of the personal property tax for 1919 levied against the street railway system in the City of Seattle, which property was purchased by the City of Seattle, and in which matter the plaintiff claimed that the City had agreed to pay three-fourths of said tax;

That during the progress of such trial on the merits in the District Court, upon, to-wit: the 22nd day of March, 1926, affiant as counsel for the defendant, The City of Seattle, objected that the Power Company was not entitled to maintain its action for the recovery of said three-fourths of such tax, for the reason that in the amended and supplemental bill of complaint of the Power Company it was alleged that the entire tax with interest and cost was paid by the plaintiff and the Old Colony Trust Company, Trustee, and that by reason thereof the "Trustee" was an essential party to the action and further that the Old Col-

ony Trust Company was maintaining an action then pending in the United States Supreme Court for the recovery from the City of the entire three-fourths of said tax;

That thereupon, Mr. James B. Howe, attorney for plaintiff, Puget Sound Power & Light Company, stated in substance in open court that the Old Colony Trust Company had assigned all of its right, title and interest in such matter to plaintiff, Puget Sound Power & Light Company, and in support of such contention offered, and the court admitted in evidence, plaintiff's Exhibits "9" and "10", which are hereto attached, marked Exhibit "1", and by reference made a part of this affidavit;

That upon, to-wit; the 5th day of April, 1926, final decree was entered by the District Court above mentioned in said cause in favor of the Puget Sound Power & Light Company and against The City of Seattle for said three-fourths of such tax, principal and interest, a copy of which decree is attached to this affidavit, marked Exhibit "2", and by reference made a part hereof.

GEORGE A. MEAGHER.

Subscribed and sworn to before me this 13th day of April, 1926.

(Seal)

R. B. MCCLINTON,
Notary Public in and for the State of Washington, residing at Seattle.

EXHIBIT 1

ENDORSED:
Rec'd June 26, 1924 No. 404 COPY
By MAILING DEPT. Plf. Ex 10
W. A. C.
Ans'd 6/25 STONE & WEBSTER
By C. B. H.
NEW YORK BOSTON CHICAGO

Boston, Mass., June 20, 1924.

OLD COLONY TRUST COMPANY,
Court Street,
Boston, Massachusetts.

Dear Sirs:

This is to confirm and evidence the arrangement and agreement with you as Trustee under the General and Refunding Mortgage dated May 2, 1921, from Puget Sound Power & Light Company relative to the litigation in the State of Washington (including the suit brought in your name as Trustee under said mortgage) with reference to the 1919 taxes assessed against Puget Sound Power & Light Company on the street railway property in Seattle which was conveyed by Puget Sound Power & Light Company to the City of Seattle on March 31, 1919, and relative to the payment of such taxes under protest.

In order that other property of Puget Sound Power and Light Company levied upon by the sheriff and included with the property subject to the lien of such General and Refunding Mort-

gage dated May 2, 1921, would not be sold under such levy, such taxes were paid on June 7, 1924, under protest, by your company as Trustee aforesaid and by the undersigned Puget Sound Power & Light Company. Part of the money necessary for this purpose was advanced by you to us against our demand note with the understanding that it would, with other moneys, be used for this purpose. Such payment of said taxes under protest was made with the further understanding between us that so far as such payment under protest carried with it subrogation your company as Trustee aforesaid was to be subrogated to the lien of such taxes upon the street railway property conveyed by us to the City of Seattle as aforesaid on March 31, 1919, and against which the taxes paid were actually assessed, and that, subject to your rights, Puget Sound Power & Light Company likewise was to be subrogated to the lien of such taxes upon such street railway property.

O.C.T.Co. June 20, 1924.

We are to protect and save you harmless from expense and liability in these matters as provided by the express terms of the General and Refunding Mortgage and in the event that such General and Refunding Mortgage is discharged before a final settlement and adjustment of this 1919 litigated tax matter is reached, either in the pending suits or otherwise, you have agreed to execute an

assignment to Puget Sound Power & Light Company of all your claims in this pending 1919 tax litigation, and particularly the claim for subrogation.

We would appreciate written acknowledgment from you confirming that the foregoing correctly evidences the arrangement and agreement between us.

Very truly yours,
PUGET SOUND POWER & LIGHT COMPANY.
By EDWARD T. STEEL,
Vice Pres.

COPY

OLD COLONY TRUST COMPANY
(Balance of heading omitted)
17 Court Street, Boston, Mass.,
June 23, 1924.

PUGET SOUND POWER & LIGHT CO.,
Stone & Webster, Inc.,
Boston, Massachusetts.

Dear Sirs:—

We acknowledge receipt of your letter of June 20, concerning 1919 taxes assessed against your company and confirm your statement of the situation in regard to their payment.

Yours very truly,
C. B. HUMPHREY,
Vice-President.

COPY

OLD COLONY TRUST COMPANY

* * *
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* * *

17 Court Street, Boston, Mass.,
July 1, 1924.

PUGET SOUND POWER & LIGHT CO.,
c/o Stone & Webster, Inc.,
147 Milk Street,
Boston, Mass.

Dear Sirs:—

Referring to your letter of June 20, 1924, and our reply thereto dated June 23, 1924, covering the arrangement and agreement between us in the matter of the litigation in the State of Washington (including the suit brought in our name as trustee under the General and Refunding Mortgage to your company dated May 2, 1921) with reference to the 1919 taxes assessed against Puget Sound Power & Light Company on the street railway property in the City of Seattle conveyed by Puget Sound Power & Light Company to the City of Seattle on March 31, 1919, and in connection with the payment of such taxes, which was made under protest, we propose today as trustee to execute and deliver Discharge of the said General and Refunding Mortgage to your company dated May 2, 1921, provision having been made for the call and payment of all bonds outstanding and secured by such mortgage.

In view of such Discharge of the General and

Refunding Mortgage and inasmuch as no final settlement and adjustment of this 1919 litigated tax matter has as yet been reached either in the pending suits or otherwise, the undersigned, Old Colony Trust Company, does now, pursuant to the arrangement and agreement as set forth in said letters of June 20, 1924, and June 23, 1924, above referred to, hereby assign, transfer and set over to Puget Sound Power & Light Company all of the undersigned's right, title, interest and claims in the said pending 1919 tax matter and litigation and does hereby subrogate said Puget Sound Power & Light Company to all of the rights and claims of the undersigned, Old Colony Trust Company, with respect thereto, and with full power and authority in said Puget Sound Power & Light Company, for its own use and benefit, but at its own cost, and either in its own name or in the name of Old Colony Trust Company, to enforce any and all such rights and claims and any and all other rights and claims with respect thereto, and otherwise to prosecute and withdraw any suits or proceedings at law or in equity therefor, and otherwise at its own cost to take all legal measures which may be proper or necessary for the complete recovery and enjoyment of the rights and claims hereby assigned.

Very truly yours,

C. B. HUMPHREY,
Vice-President.

No. 404
Plf Ex 9

VOLUME 901—MORTGAGES
Page 314
OLD COLONY TRUST COMPANY
To
PUGET SOUND POWER & LIGHT COMPANY,

SATISFACTION OF MORTGAGE

KNOW ALL MEN BY THESE PRESENTS: THAT Whereas Puget Sound Power & Light Company, a Massachusetts Corporation, to secure its general and refunding mortgage gold bonds to be issued thereunder, executed, acknowledged and delivered to Old Colony Trust Company, a Massachusetts corporation, as Trustee, a certain indenture of Trust or Mortgage dated as of the 2nd day of May, 1921, and recorded in the office of the Auditor of King County (Washington), in Volume 822 of Mortgages at page 1 and there left on file as a chattel mortgage being Mortgage File No. 68307, and elsewhere in the State of Washington; and

Whereas provision for the call of all bonds now outstanding thereunder, and for the payment of the principal thereof and interest thereon to the date fixed for said payment, and of the premiums thereon, has been duly made by said Puget Sound Power & Light Company by depositing with Old Colony Trust Company, Trustee as aforesaid the necessary cash therefor: and

Whereas said Puget Sound Power & Light Company has requested said Old Colony Trust Company, Trustee, as aforesaid, to cancel and discharge the lien of said indenture of Trust or mortgage, and (to such extent only as the same are supplemental to said indenture of Trust or Mortgage) all indentures supplemental thereto:

Now, Therefore, said Old Colony Trust Company as Trustees under said indenture of Trust or Mortgage dated as of May 2, 1921, pursuant to authority therein contained and pursuant to all other authority vested in it, in consideration of One Dollar and other valuable considerations to it in hand paid, the receipt whereof is hereby acknowledged, hereby acknowledges satisfaction of and cancels and discharges said indenture of Trust or Mortgage, and (to such extent only as the same are supplemental to said indenture of Trust or Mortgage) all indentures supplemental thereto and hereby releases, quit claims, assigns, transfers, and set over unto said Puget Sound Power & Light Company as Trustees, its successors and assigns, all right, title and interest acquired by said Old Colony Trust Company as Trustee as aforesaid under and by virtue of said indenture of Trust or Mortgage and/or said indentures supplemental thereto in and to the property therein described and/or mortgaged. To Have and To Hold the premises hereby released

unto said Puget Sound Power & Light Company, its successors and assigns, forever.

In Witness Whereof, Old Colony Trust Company has caused these presents as well as fifteen other instruments of discharge of like tenor and effect, to be executed by C. B. Humphrey, Vice-President, and has caused its corporate seal to be hereto affixed and attested by G. A. Chisholm its Assistant Secretary, on this first day of July, 1924.

(O. C. T. Co. Corp. Seal)

OLD COLONY TRUST COMPANY,
By C. B. HUMPHREY,
Vice-President.

Attest:
G. A. CHISHOLM,
Assistant Secretary.

COMMONWEALTH OF MASSACHUSETTS
COUNTY OF SUFFOLK } ss.

On this 1st day of July, 1924, before me personally appeared C. B. Humphrey and G. A. Chisholm, to me known to be the Vice-President and Assistant Secretary of the Corporation that executed the within and foregoing instrument, and acknowledged the said instrument to be the free and voluntary act and deed of said
compared with record H. P.
corporation for the uses and purposes therein mentioned, and on oath stated that they were

authorized to execute said instrument and that the seal affixed is the corporate seal of said corporation.

In Witness Whereof, I have hereunto set my hand and affixed my official seal the day and year first above written.

(W. G. L. Notarial Seal)

WARREN G. LAWSON,
Notary Public in and for the Commonwealth of Massachusetts, residing at Arlington, Mass.

My commission expires November 7, 1927.

Filed for record at request of Mortgagee July 8, 1924, at 12 min. past 4 P. M.

D. E. FERGUSON,
County Auditor.

Compared with Record H. P.

COUNTY OF KING,
STATE OF WASHINGTON, } ss.

I, D. E. FERGUSON, Auditor of King County, State of Washington, and ex-officio Recorder of Deeds, and the legal keeper of the records hereinafter mentioned, in and for said County, do hereby certify the above and foregoing to be a true and correct copy of a SATISFACTION OF MORTGAGE as recorded in this office in Vol. 901 of Mortgages, page 314, and Chattel Mortgage file 68307, Records of King County.

WITNESS my hand and official seal this 19th day of March, 1926.

D. E. FERGUSON,
Auditor of King County, Washington.
By S. C. JOHN, *Deputy.*

(SEAL)

Endorsed: Filed in the United States District Court, Western District of Washington, Northern Division. Mar. 24, 1926, Ed. M. Lakin, Clerk. By S. M. H. Cook, Deputy.

No. A 226

UNITED STATES OF AMERICA
WESTERN DISTRICT OF WASHINGTON } ss.

I, ED. M. LAKIN, Clerk of the District Court of the United States for the Western District of Washington, do hereby certify that I have compared the foregoing copy with the original Plaintiff's Exhibits Nos. 9 and 10, introduced and used in evidence at the trial of the above entitled cause Mar. 22 26, in the foregoing entitled cause, now on file and of record in my office at Seattle, and that the same is a true and perfect transcript of said original and of the whole thereof.

Witness my hand and the seal of said Court, this 1st day of April, 1926.

ED. M. LAKIN, Clerk.
By T. W. EGGER, Deputy.

(Seal of the United States District Court, Western District of Washington)

(ENDORSED ON BACK):

No. 404

IN THE DISTRICT COURT
OF THE UNITED STATES
FOR THE
WESTERN DISTRICT OF
WASHINGTON

PUGET SOUND POWER & LIGHT CO.
VS.
THE CITY OF SEATTLE, *et al*,
CERTIFIED COPY OF
Plaintiff's Exhibits Nos.
9 and 10.

EXHIBIT 2

IN THE DISTRICT COURT OF THE UNITED STATES FOR THE WESTERN DISTRICT OF WASHINGTON, NORTHERN DIVISION.

PUGET SOUND POWER & LIGHT COMPANY, *Plaintiff*, vs. THE CITY OF SEATTLE, a Municipal Corporation, *Defendant*.	No. 404. IN EQUITY. **DECREE**

This cause came on to be heard at this term of court and was argued by counsel and thereupon, upon consideration thereof,

It is by the court ORDERED, ADJUDGED and DECREED as follows:

1. That the plaintiff, Puget Sound Power & Light Company, recover of and from the defendant, The City of Seattle, the sum of five hundred forty-five thousand, three hundred and seventy dollars and twenty-three cents ($545,370.23), together with its costs and disbursements in this suit as taxed by the clerk of this court.

2. That such sum is hereby decreed to be a lien upon the street railway property sold by the plaintiff to the defendant and described in Ordinance No. 39025 of The City of Seattle, approved December 31, 1918, and in the contract executed by the plaintiff and defendant on February 10, 1919, and the deed executed by the plaintiff and delivered to the defendant and accepted by the defendant on March 31, 1919.

3. That such sum is the portion of the taxes for the year 1919 upon such property subject to which the defendant purchased the property from the plaintiff and which defendant assumed and agreed to pay, together with interest thereon and the sheriff's costs of collecting the same.

4. The plaintiff is subrogated to the lien of the State, the County of King, School District No. 1 and City of Seattle taxes for the year 1919 upon such property to the extent of such portion with interest thereon and sheriff's costs of collection with interest, amounting to the total sum of five hundred forty-five thousand, three hundred

and seventy dollars and twenty-three cents ($545,370.23), with interest from this date on such sum until paid.

5. That if the defendant, The City of Seattle, fail to pay to the plaintiff within NINETY days from this date said sum of five hundred forty-five thousand, three hundred and seventy dollars and twenty-three cents ($545,370.23), with interest from this date and the costs of this suit, an order for the sale of such property shall be issued and such property shall be sold by the marshal of this court, after advertising the sale in the manner provided by law and the rules of this court for the sale of property under execution issuing from this court, and the proceeds of such sale after payment to the plaintiff of the amount herein decreed to be paid by the defendant, The City of Seattle, to the plaintiff, shall be paid out as this court shall hereafter order.

6. This court retains jurisdiction of this cause for the purpose of enforcing this decree and the plaintiff is hereby authorized to apply to this court for any and all further orders which may be necessary or proper to enforce this decree and each and every part thereof.

xxxxxxxxx BOURQUIN,
Judge of the United States District Court, Presiding in the District Court of the United States, for the Western District of Washington.

Dated April 5, 1926.

WESTERN DISTRICT OF WASHINGTON }
UNITED STATES OF AMERICA } ss.

I, ED. M. LAKIN, Clerk of the District Court of the United States for the Western District of Washington, do hereby certify that I have compared the foregoing copy with the original

DECREE

in the foregoing entitled cause, now on file and of record in my office at Seattle, and that the same is a true and perfect transcript of said original and of the whole thereof.

Witness my hand and the seal of said Court, this 6th day of April, 1926.

ED. M. LAKIN, Clerk,
By S. M. H. COOK, Deputy.

(Seal of the United States District Court, Western District of Washington)

(ENDORSED ON BACK):

No. 404

IN THE DISTRICT COURT
OF THE UNITED STATES
FOR THE
WESTERN DISTRICT OF
WASHINGTON

Puget Sound Power & Light Company,
Plaintiff,

VS.

The City of Seattle, a Municipal Corporation,
Defendant.

CERTIFIED COPY OF
DECREE

SUPREME COURT OF THE UNITED STATES.

No. 194.—October Term, 1925.

Old Colony Trust Company, Appellant, *vs.* City of Seattle et al.	Appeal from the District Court of the United States for the Western District of Washington.

[June 1, 1926.]

Mr. Justice Van Devanter delivered the opinion of the Court.

In the beginning of the year 1919 the Puget Sound Power & Light Company owned and was operating two public utilities in the City of Seattle—one a power and lighting system and the other a street railway system. It still owns and operates the power and lighting system, and the Old Colony Trust Company is the trustee in a mortgage which was given thereon in 1921 to secure a large issue of bonds still outstanding.

The City of Seattle now owns and operates the street railway system. The transfer from the Puget Sound Company to the city was effected March 31, 1919, under a contract between them entered into six weeks before. Anticipating that the system would be taxed for that year by reason of the company's ownership in the early months, they stipulated in the contract, and again in the deed of transfer, that "state, county and municipal taxes" laid on the property for 1919 should be borne and paid by them in proportions conforming to their respective periods of possession during the year. On that basis the company became obligated to pay one-fourth and the city three-fourths.

Shortly after the transfer state, county and municipal taxes aggregating over $400,000 were laid on the property for the year 1919. Of that amount over $179,000 represented taxes imposed by the city. The taxes became a lien on the property March 15, 1919, and were listed against the company in the tax records by reason of its ownership on that date. The county treasurer was to collect the taxes and pay the money over to the State, county